

1 AN ACT relating to revenue measures and declaring an emergency.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 138.130 is amended to read as follows:

4 As used in KRS 138.130 to 138.205:

- 5 (1) (a) "Chewing tobacco" means any leaf tobacco that is not intended to be smoked
6 and includes loose leaf chewing tobacco, plug chewing tobacco, and twist
7 chewing tobacco.
- 8 (b) "Chewing tobacco" does not include snuff;
- 9 (2) (a) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, or
10 any substitute for tobacco, irrespective of size or shape and whether or not the
11 tobacco is flavored, adulterated, or mixed with any other ingredient, the
12 wrapper or cover of which is made of paper or any other substance or
13 material, except tobacco.
- 14 (b) "Cigarettes" does not include reference tobacco products or electronic
15 cigarettes;
- 16 (3) "Cigarette tax" means the group of taxes consisting of:
- 17 (a) The tax imposed by KRS 138.140(1)(a);
- 18 (b) The surtax imposed by KRS 138.140(1)(b); and
- 19 (c) The surtax imposed by KRS 138.140(1)(c);
- 20 (4) "Department" means the Department of Revenue;
- 21 (5) "Distributor" means any person within this state in possession of tobacco products
22 for resale within this state on which the tobacco products tax imposed under KRS
23 138.140(2) has not been paid;
- 24 (6) **"Electronic cigarette" means any device, whether manufactured, distributed,**
25 **marketed, or sold as an e-cigarette, e-cigar, e-pipe, or similar product and every**
26 **variation thereof, regardless of shape or size, that contains a heating element,**
27 **battery, electronic circuit, power source, or other electronic, chemical, or**

1 *mechanical means used to produce vapor from nicotine or any other substance,*
2 *the use of which simulates smoking;*

3 (7) "Half-pound unit" means a consumer-sized container, pouch, or package:

4 (a) Containing at least four (4) ounces but not more than eight (8) ounces of
5 chewing tobacco by net weight;

6 (b) Produced by the manufacturer to be sold to consumers as a half-pound unit
7 and not produced to be divided or sold separately; and

8 (c) Containing one (1) individual container, pouch, or package;

9 (8)~~(7)~~ "Manufacturer" means any person who manufactures or produces cigarettes or
10 tobacco products within or without this state;

11 (9)~~(8)~~ "Nonresident wholesaler" means any person who purchases cigarettes directly
12 from the manufacturer and maintains a permanent location outside this state where
13 Kentucky cigarette tax evidence is attached or from where Kentucky cigarette tax is
14 reported and paid;

15 (10)~~(9)~~ "Person" means any individual, firm, copartnership, joint venture, association,
16 municipal or private corporation whether organized for profit or not, the
17 Commonwealth of Kentucky or any of its political subdivisions, an estate, trust, or
18 any other group or combination acting as a unit;

19 (11)~~(10)~~ "Pound unit" means a consumer-sized container, pouch, or package:

20 (a) Containing more than eight (8) ounces but not more than sixteen (16) ounces
21 of chewing tobacco by net weight;

22 (b) Produced by the manufacturer to be sold to consumers as a pound unit and not
23 produced to be divided or sold separately; and

24 (c) Containing one (1) individual container, pouch, or package;

25 (12)~~(11)~~ "Reference tobacco products" means tobacco products or cigarettes made by a
26 manufacturer specifically for an accredited state college or university to be held by
27 the college or university until sale or transfer to a laboratory, hospital, medical

1 center, institute, college or university, manufacturer, or other institution;

2 ~~(13)~~~~(12)~~ "Resident wholesaler" means any person who purchases at least seventy-five
3 percent (75%) of all cigarettes purchased by the wholesaler directly from the
4 manufacturer on which the cigarette tax is unpaid, and who maintains an established
5 place of business in this state where the wholesaler attaches cigarette tax evidence
6 or receives untax-paid cigarettes;

7 ~~(14)~~~~(13)~~ "Retail distributor" means a retailer who has obtained a retail distributor's
8 license under KRS 138.195;

9 ~~(15)~~~~(14)~~ "Retailer" means any person who sells to a consumer or to any person for any
10 purpose other than resale;

11 ~~(16)~~~~(15)~~ "Sale" or "sell" means any transfer for a consideration, exchange, barter, gift,
12 offer for sale, advertising for sale, soliciting an order for cigarettes or tobacco
13 products, and distribution in any manner or by any means whatsoever;

14 ~~(17)~~~~(16)~~ "Sale at retail" means a sale to any person for any other purpose other than
15 resale;

16 ~~(18)~~~~(17)~~ "Single unit" means a consumer-sized container, pouch, or package:

- 17 (a) Containing less than four (4) ounces of chewing tobacco by net weight;
- 18 (b) Produced by the manufacturer to be sold to consumers as a single unit and not
19 produced to be divided or sold separately; and
- 20 (c) Containing one (1) individual container, pouch, or package;

21 ~~(19)~~~~(18)~~ (a) "Snuff" means tobacco that:

- 22 1. Is finely cut, ground, or powdered; and
- 23 2. Is not for smoking.

24 (b) "Snuff" includes snus;

25 ~~(20)~~~~(19)~~ "Sub-jobber" means any person who purchases cigarettes from a resident
26 wholesaler, nonresident wholesaler, or unclassified acquirer licensed under KRS
27 138.195 on which the cigarette tax has been paid and makes them available to

1 retailers for resale. No person shall make cigarettes available to retailers for resale
2 unless the person certifies and establishes to the satisfaction of the department that
3 firm arrangements have been made to regularly supply at least five (5) retail
4 locations with Kentucky tax-paid cigarettes for resale in the regular course of
5 business;

6 (21)~~[(20)]~~ "Tax evidence" means any stamps, metered impressions, or other indicia
7 prescribed by the department by administrative regulation as a means of denoting
8 the payment of cigarette taxes;

9 (22)~~[(21)]~~ "Tobacco products" means:

10 (a) *Vapor products; and*

11 (b) Any smokeless tobacco products, smoking tobacco, chewing tobacco, and any
12 kind or form of tobacco prepared in a manner suitable for chewing or
13 smoking, or both, or any kind or form of tobacco that is suitable to be placed
14 in an individual's oral cavity, except cigarettes;

15 (23)~~[(22)]~~ "Tobacco products tax" means the tax imposed by KRS 138.140(2);

16 (24)~~[(23)]~~ "Transporter" means any person transporting untax-paid cigarettes obtained
17 from any source to any destination within this state, other than cigarettes transported
18 by the manufacturer thereof;

19 (25)~~[(24)]~~ "Unclassified acquirer" means any person in this state who acquires cigarettes
20 from any source on which the cigarette tax has not been paid, and who is not a
21 person otherwise required to be licensed under KRS 138.195;

22 (26)~~[(25)]~~ "Untax-paid cigarettes" means any cigarettes on which the cigarette tax
23 imposed by KRS 138.140 has not been paid;

24 (27)~~[(26)]~~ "Untax-paid tobacco products" means any tobacco products on which the
25 tobacco products tax imposed by KRS 138.140 has not been paid;~~[-and]~~

26 (28) *"Vapor products" means any liquid solution that is intended to be used with or in*
27 *an electronic cigarette whether sold with an electronic cigarette for a single price*

1 or sold separately; and

2 ~~(29)~~~~(27)~~ "Vending machine operator" means any person who operates one (1) or more
3 cigarette vending machines.

4 ➔Section 2. KRS 138.140 is amended to read as follows:

- 5 (1) (a) A tax shall be paid on the sale of cigarettes within the state at a proportionate
6 rate of three cents (\$0.03) on each twenty (20) cigarettes.
- 7 (b) Effective July 1, 2020~~[2018]~~, a surtax shall be paid in addition to the tax
8 levied in paragraph (a) of this subsection at a proportionate rate of one dollar
9 and sixteen cents (\$1.16)~~[one dollar and six cents (\$1.06)]~~ on each twenty
10 (20) cigarettes.
- 11 (c) A surtax shall be paid in addition to the tax levied in paragraph (a) of this
12 subsection and in addition to the surtax levied by paragraph (b) of this
13 subsection, at a proportionate rate of one cent (\$0.01) on each twenty (20)
14 cigarettes. The revenues from this surtax shall be deposited in the cancer
15 research institutions matching fund created in KRS 164.043.
- 16 (d) The surtaxes imposed by paragraphs (b) and (c) of this subsection shall be
17 paid at the time that the tax imposed by paragraph (a) of this subsection is
18 paid.
- 19 (2) (a) An excise tax is hereby imposed upon every distributor for the privilege of
20 selling tobacco products in this state at the following rates:
- 21 1. Upon snuff at the rate of thirty-eight cents (\$0.38)~~[nineteen cents~~
22 ~~(\$0.19)]~~ per each one and one-half (1-1/2) ounces or portion thereof by
23 net weight sold;
- 24 2. Upon chewing tobacco at the rate of:
- 25 a. Thirty-eight cents (\$0.38)~~[Nineteen cents (\$0.19)]~~ per each single
26 unit sold;
- 27 b. Eighty cents (\$0.80)~~[Forty cents (\$0.40)]~~ per each half-pound unit

1 sold; or

2 c. **One dollar and thirty cents (\$1.30)**~~[Sixty five cents (\$0.65)]~~ per
3 each pound unit sold.

4 If the container, pouch, or package on which the tax is levied contains
5 more than sixteen (16) ounces by net weight, the rate that shall be
6 applied to the unit shall equal the sum of **one dollar and thirty cents**
7 **(\$1.30)**~~[sixty five cents (\$0.65)]~~ plus **thirty-eight cents (\$0.38)**~~[nineteen~~
8 ~~cents (\$0.19)]~~ for each increment of four (4) ounces or portion thereof
9 exceeding sixteen (16) ounces sold;~~and]~~

10 3. **Upon vapor products sold, at the rate of ten cents (\$0.10) per each**
11 **fluid milliliter of liquid solution or portion thereof; and**

12 **4.** Upon tobacco products sold, at the rate of **thirty percent (30%)**~~[fifteen~~
13 ~~percent (15%)]~~ of the actual price for which the distributor sells tobacco
14 products, except snuff, **vapor products**, and chewing tobacco, within the
15 Commonwealth.

16 (b) The net weight **or fluid content** posted by the manufacturer on the container,
17 pouch, or package or on the manufacturer's invoice shall be used to calculate
18 the tax due on snuff, **vapor products**, or chewing tobacco.

19 (c) 1. A retailer located in this state shall not purchase tobacco products for
20 resale to consumers from any person within or outside this state unless
21 that person is a distributor licensed under KRS 138.195(7)(a) or the
22 retailer applies for and is granted a retail distributor's license under KRS
23 138.195(7)(b) for the privilege of purchasing untax-paid tobacco
24 products and remitting the tax as provided in this paragraph.

25 2. A licensed retail distributor of tobacco products shall be subject to the
26 excise tax as follows:

27 a. On purchases of untax-paid snuff, at the same rate levied by

- 1 paragraph (a)1. of this subsection;
- 2 b. On purchases of untax-paid chewing tobacco, at the same rates
- 3 levied by paragraph (a)2. of this subsection;~~and~~
- 4 c. **On purchases of untax-paid vapor products, at the same rate**
- 5 **levied by paragraph (a)3. of this subsection; and**
- 6 **d.** On purchases of untax-paid tobacco products, except snuff, **vapor**
- 7 **products,** and chewing tobacco, **thirty percent (30%)**~~fifteen~~
- 8 ~~percent (15%)~~ of the total purchase price as invoiced by the retail
- 9 distributor's supplier.
- 10 (d) 1. The licensed distributor that first possesses tobacco products for sale to a
- 11 retailer in this state or for sale to a person who is not licensed under
- 12 KRS 138.195(7) shall be the distributor liable for the tax imposed by
- 13 this subsection except as provided in subparagraph 2. of this paragraph.
- 14 2. A distributor licensed under KRS 138.195(7)(a) may sell tobacco
- 15 products to another distributor licensed under KRS 138.195(7)(a)
- 16 without payment of the excise tax. In such case, the purchasing licensed
- 17 distributor shall be the distributor liable for the tax.
- 18 3. A licensed distributor or licensed retail distributor shall:
- 19 a. Identify and display the distributor's or retail distributor's license
- 20 number on the invoice to the retailer; and
- 21 b. Identify and display the excise tax separately on the invoice to the
- 22 retailer. If the excise tax is included as part of the product's sales
- 23 price, the licensed distributor or licensed retail distributor shall list
- 24 the total excise tax in summary form by tax type with invoice
- 25 totals.
- 26 4. It shall be presumed that the excise tax has not been paid if the licensed
- 27 distributor or licensed retail distributor does not comply with

1 subparagraph 3. of this paragraph.

2 (e) No tax shall be imposed on tobacco products under this subsection that are not
3 within the taxing power of this state under the Commerce Clause of the
4 United States Constitution.

5 (3) ~~{(a)—}~~The taxes imposed by subsections (1) and (2) of this section:

6 (a)~~{1}~~. Shall not apply to reference tobacco products; and

7 (b)~~{2}~~. Shall be paid only once, regardless of the number of times the cigarettes
8 or tobacco products may be sold.

9 ~~{(b) The taxes imposed by subsection (1)(a) and (b) and subsection (2) of this~~
10 ~~section shall be reduced by:~~

11 1. ~~Fifty percent (50%) on any product as to which a modified risk tobacco~~
12 ~~product order is issued under 21 U.S.C. sec. 387k(g)(1); or~~

13 2. ~~Twenty five percent (25%) for any product as to which a modified risk~~
14 ~~tobacco product order is issued under 21 U.S.C. sec. 387k(g)(2).]~~

15 (4) A reference tobacco product shall carry a marking labeling the contents as a
16 research cigarette or a research tobacco product to be used only for tobacco-health
17 research and experimental purposes and shall not be offered for sale, sold, or
18 distributed to consumers.

19 (5) The department may prescribe forms and promulgate administrative regulations to
20 execute and administer the provisions of this section.

21 ~~{(6) The General Assembly recognizes that increasing taxes on tobacco products should~~
22 ~~reduce consumption, and therefore result in healthier lifestyles for Kentuckians. The~~
23 ~~relative taxes on tobacco products proposed in this section reflect the growing data~~
24 ~~from scientific studies suggesting that although smokeless tobacco poses some~~
25 ~~risks, those health risks are significantly less than the risks posed by other forms of~~
26 ~~tobacco products. Moreover, the General Assembly acknowledges that some in the~~
27 ~~public health community recognize that tobacco harm reduction should be a~~

1 complementary public health strategy regarding tobacco products. Taxing tobacco
2 products according to relative risk is a rational tax policy and may well serve the
3 public health goal of reducing smoking-related mortality and morbidity and
4 lowering health care costs associated with tobacco-related disease.

5 ~~(7) Any person subject to the taxes imposed under subsections (1) and (2) of this~~
6 ~~section that:~~

7 ~~(a) Files an application related to a modified risk tobacco product shall report to~~
8 ~~the department that an application has been filed within thirty (30) days of that~~
9 ~~filing; and~~

10 ~~(b) Receives an order authorizing the marketing of a modified risk tobacco~~
11 ~~product shall report to the department that an authorizing order has been~~
12 ~~received.~~

13 ~~(8) Upon receipt of the information required by subsection (7)(b) of this section, the~~
14 ~~department shall reduce the tax imposed on the modified risk tobacco product as~~
15 ~~required by subsection (3)(b) of this section on the first day of the calendar month~~
16 ~~following the expiration of forty five (45) days following receipt of the information~~
17 ~~required by subsection (7)(b) of this section.]~~

18 ➔Section 3. KRS 138.143 is amended to read as follows:

19 (1) Every retailer, sub-jobber, resident wholesaler, nonresident wholesaler, and
20 unclassified acquirer shall:

21 (a) Take a physical inventory of all cigarettes in packages bearing Kentucky tax
22 stamps, and all unaffixed Kentucky cigarette tax stamps possessed by them or
23 in their control at 11:59 p.m. on June 30, 2020~~[2018]~~. Inventory of cigarettes
24 in vending machines may be accomplished by:

- 25 1. Taking an actual physical inventory;
- 26 2. Estimating the cigarettes in vending machines by reporting one-half
27 (1/2) of the normal fill capacity of the machines, as reflected in

- 1 individual inventory records maintained for vending machines; or
- 2 3. Using a combination of the methods prescribed in subparagraphs 1. and
- 3 2. of this paragraph;
- 4 (b) File a return with the department on or before July 10, 2020~~[2018]~~, showing
- 5 the entire wholesale and retail inventories of cigarettes in packages bearing
- 6 Kentucky tax stamps, and all unaffixed Kentucky cigarette tax stamps
- 7 possessed by them or in their control at 11:59 p.m. on June 30, 2020~~[2018]~~;
- 8 and
- 9 (c) Pay a floor stock tax at a proportionate rate equal to ten cents (\$0.10)~~[fifty~~
- 10 ~~cents (\$0.50)]~~ on each twenty (20) cigarettes in packages bearing a Kentucky
- 11 tax stamp and unaffixed Kentucky tax stamps in their possession or control at
- 12 11:59 p.m. on June 30, 2020~~[2018]~~.
- 13 (2) Every retailer and sub-jobber shall:
- 14 (a) Take a physical inventory of all tobacco products possessed by them or in
- 15 their control at 11:59 p.m. on June 30, 2020;
- 16 (b) File a return with the department on or before July 10, 2020, showing the
- 17 entire inventory, by category, of tobacco products possessed by them or in
- 18 their control at 11:59 p.m. on June 30, 2020; and
- 19 (c) For each of the following categories of tobacco products in their possession
- 20 or control at 11:59 p.m. on June 30, 2020, pay a floor stock tax at a
- 21 proportionate rate equal to:
- 22 1. Ten cents (\$0.10) on each fluid milliliter of liquid solution or portion
- 23 thereof contained in vapor products;
- 24 2. Nineteen cents (\$0.19) on each unit of snuff;
- 25 3. a. Nineteen cents (\$0.19) on each single unit of chewing tobacco;
- 26 b. Forty cents (\$0.40) on each half-pound unit of chewing tobacco;
- 27 c. Sixty-five cents (\$0.65) on each pound unit of chewing tobacco.

1 *If the container, pouch, or package on which the tax is levied contains*
 2 *more than sixteen (16) ounces by net weight, the rate that shall be*
 3 *applied to the unit shall equal the sum of sixty-five cents (\$0.65) plus*
 4 *nineteen cents (\$0.19) for each increment of four (4) ounces, or*
 5 *portion thereof, exceeding sixteen (16) ounces; and*

6 *4. Fifteen percent (15%) of the actual amount paid for each category of*
 7 *tobacco products, except vapor products, snuff, and chewing tobacco.*
 8 *If the retailer or sub-jobber cannot determine the actual amount paid,*
 9 *the retailer or sub-jobber may use as the actual amount paid per unit*
 10 *as reflected on the most recent invoice received prior to July 1, 2020,*
 11 *for the same category of tobacco products*†

12 ~~1. Take a physical inventory of all units of snuff possessed by them~~
 13 ~~or in their control at 11:59 p.m. on March 31, 2009;~~

14 ~~2. File a return with the department on or before April 10, 2009,~~
 15 ~~showing the entire inventory of snuff possessed by them or in their~~
 16 ~~control at 11:59 p.m. on March 31, 2009; and~~

17 ~~3. Pay a floor stock tax at a proportionate rate equal to nine and one-~~
 18 ~~half cents (\$0.095) on each unit of snuff in their possession or~~
 19 ~~control at 11:59 p.m. on March 31, 2009; and~~

20 ~~(b) 1. a. Take a physical inventory of all other tobacco products~~
 21 ~~possessed by them or in their control at 11:59 p.m. on March 31,~~
 22 ~~2009;~~

23 ~~b. File a return with the department on or before April 10, 2009,~~
 24 ~~showing the entire inventories of other tobacco products possessed~~
 25 ~~by them or in their control at 11:59 p.m. on March 31, 2009; and~~

26 ~~e. Pay a floor stock tax at a proportionate rate equal to seven and~~
 27 ~~one-half percent (7.5%) on the purchase price of other tobacco~~

1 ~~products in their possession or control at 11:59 p.m. on March 31,~~
2 ~~2009.~~

3 ~~2. a. As used in this paragraph, "purchase price" means the actual~~
4 ~~amount paid for the other tobacco products subject to the tax~~
5 ~~imposed by this paragraph.~~

6 ~~b. If the retailer or sub-jobber cannot determine the actual amount~~
7 ~~paid for each item of other tobacco product, the retailer or sub-~~
8 ~~jobber may use as the purchase price the amount per unit paid as~~
9 ~~reflected on the most recent invoice received prior to April 1,~~
10 ~~2009, for the same category of other tobacco product.~~

11 ~~c. To prevent double taxation, if the invoice used by the retailer or~~
12 ~~sub-jobber to determine the purchase price of the other tobacco~~
13 ~~product does not separately state the tax paid by the wholesaler,~~
14 ~~the retailer or sub-jobber may reduce the amount paid per unit by~~
15 ~~seven and one-half percent (7.5%).~~

16 (3) (a) The taxes imposed by this section may be paid in three (3) installments. The
17 first installment, in an amount equal to at least one-third (1/3) of the total
18 amount due, shall be remitted with the return provided by the department on
19 or before July 10, 2020~~[2018]~~. The second installment, in an amount that
20 brings the total amount paid to at least two-thirds (2/3) of the total amount
21 due, shall be remitted on or before August 10, 2020~~[2018]~~. The third
22 installment, in an amount equal to the remaining balance, shall be remitted on
23 or before September 10, 2020~~[2018]~~.

24 (b) Interest shall not be imposed against any outstanding installment payment not
25 yet due from any retailer, sub-jobber, resident wholesaler, nonresident
26 wholesaler, or unclassified acquirer who files the return and makes payments
27 as required under this section.

1 (c) Any retailer, sub-jobber, resident wholesaler, nonresident wholesaler, or
2 unclassified acquirer who fails to file a return or make a payment on or before
3 the dates provided in this section shall, in addition to the tax, pay interest at
4 the tax interest rate as defined in KRS 131.010(6) from the date on which the
5 return was required to be filed.

6 ➔Section 4. KRS 141.0401 is amended to read as follows:

7 (1) As used in this section:

8 (a) "Kentucky gross receipts" means an amount equal to the computation of the
9 numerator of the apportionment fraction under KRS 141.120, any
10 administrative regulations related to the computation of the sales factor, and
11 KRS 141.121 and includes the proportionate share of Kentucky gross receipts
12 of all wholly or partially owned limited liability pass-through entities,
13 including all layers of a multi-layered pass-through structure;

14 (b) "Gross receipts from all sources" means an amount equal to the computation
15 of the denominator of the apportionment fraction under KRS 141.120, any
16 administrative regulations related to the computation of the sales factor, and
17 KRS 141.121 and includes the proportionate share of gross receipts from all
18 sources of all wholly or partially owned limited liability pass-through entities,
19 including all layers of a multi-layered pass-through structure;

20 (c) "Combined group" means all members of an affiliated group as defined in
21 KRS 141.200(9)(b) and all limited liability pass-through entities that would be
22 included in an affiliated group if organized as a corporation;

23 (d) "Cost of goods sold" means:

24 1. Amounts that are:

25 a. Allowable as cost of goods sold pursuant to the Internal Revenue
26 Code and any guidelines issued by the Internal Revenue Service
27 relating to cost of goods sold, unless modified by this paragraph;

- 1 "Kentucky gross profits" means Kentucky gross receipts; and
- 2 2. "Gross profits from all sources" means gross receipts from all sources
- 3 reduced by returns and allowances attributable to gross receipts from all
- 4 sources, less the cost of goods sold attributable to gross receipts from all
- 5 sources. If the amount of returns and allowances attributable to gross
- 6 receipts from all sources and the cost of goods sold attributable to gross
- 7 receipts from all sources is zero, then gross profits from all sources
- 8 means gross receipts from all sources;
- 9 (f) "Direct labor" means labor that is incorporated into the tangible product sold
- 10 or is an integral part of the manufacturing process;
- 11 (g) "Bulk delivery costs" means the cost of delivering the product to the consumer
- 12 if:
- 13 1. The tangible product is delivered in bulk and requires specialized
- 14 equipment that generally precludes commercial shipping; and
- 15 2. The tangible product is taxable under KRS 138.220;
- 16 (h) "Manufacturing" and "producing" means:
- 17 1. Manufacturing, producing, constructing, or assembling components to
- 18 produce a significantly different or enhanced end tangible product;
- 19 2. Mining or severing natural resources from the earth; or
- 20 3. Growing or raising agricultural or horticultural products or animals;
- 21 (i) "Real property" means land and anything growing on, attached to, or erected
- 22 on it, excluding anything that may be severed without injury to the land;
- 23 (j) "Reselling," "retailing," and "wholesaling" mean the sale of a tangible
- 24 product;
- 25 (k) "Tangible personal property" means property, other than real property, that has
- 26 physical form and characteristics; and
- 27 (l) "Tangible product" means real property and tangible personal property;

1 (2) (a) For taxable years beginning on or after January 1, 2007, an annual limited
2 liability entity tax shall be paid by every corporation and every limited liability
3 pass-through entity doing business in Kentucky on all Kentucky gross receipts
4 or Kentucky gross profits except as provided in this subsection. A small
5 business exclusion from this tax shall be provided based on the reduction
6 contained in this subsection. The tax shall be the greater of the amount
7 computed under paragraph (b) of this subsection or **two hundred twenty-five**
8 **dollars (\$225)**~~one hundred seventy five dollars (\$175)~~, regardless of the
9 application of any tax credits provided under this chapter or any other
10 provisions of the Kentucky Revised Statutes for which the business entity may
11 qualify.

12 (b) The limited liability entity tax shall be the lesser of subparagraph 1. or 2. of
13 this paragraph:

14 1. a. If the corporation's or limited liability pass-through entity's gross
15 receipts from all sources are three million dollars (\$3,000,000) or
16 less, the limited liability entity tax shall be **two hundred twenty-**
17 **five dollars (\$225)**~~one hundred seventy five dollars (\$175)~~;

18 b. If the corporation's or limited liability pass-through entity's gross
19 receipts from all sources are greater than three million dollars
20 (\$3,000,000) but less than six million dollars (\$6,000,000), the
21 limited liability entity tax shall be nine and one-half cents (\$0.095)
22 per one hundred dollars (\$100) of the corporation's or limited
23 liability pass-through entity's Kentucky gross receipts reduced by
24 an amount equal to two thousand eight hundred fifty dollars
25 (\$2,850) multiplied by a fraction, the numerator of which is six
26 million dollars (\$6,000,000) less the amount of the corporation's or
27 limited liability pass-through entity's Kentucky gross receipts for

- 1 the taxable year, and the denominator of which is three million
2 dollars (\$3,000,000), but in no case shall the result be less than **two**
3 **hundred twenty-five dollars (\$225)**~~one hundred seventy-five~~
4 ~~dollars (\$175)~~];
- 5 c. If the corporation's or limited liability pass-through entity's gross
6 receipts from all sources are equal to or greater than six million
7 dollars (\$6,000,000), the limited liability entity tax shall be nine
8 and one-half cents (\$0.095) per one hundred dollars (\$100) of the
9 corporation's or limited liability pass-through entity's Kentucky
10 gross receipts.
- 11 2. a. If the corporation's or limited liability pass-through entity's gross
12 profits from all sources are three million dollars (\$3,000,000) or
13 less, the limited liability entity tax shall be **two hundred twenty-**
14 **five dollars (\$225)**~~one hundred seventy-five dollars (\$175)~~];
- 15 b. If the corporation's or limited liability pass-through entity's gross
16 profits from all sources are at least three million dollars
17 (\$3,000,000) but less than six million dollars (\$6,000,000), the
18 limited liability entity tax shall be seventy-five cents (\$0.75) per
19 one hundred dollars (\$100) of the corporation's or limited liability
20 pass-through entity's Kentucky gross profits, reduced by an amount
21 equal to twenty-two thousand five hundred dollars (\$22,500)
22 multiplied by a fraction, the numerator of which is six million
23 dollars (\$6,000,000) less the amount of the corporation's or limited
24 liability pass-through entity's Kentucky gross profits, and the
25 denominator of which is three million dollars (\$3,000,000), but in
26 no case shall the result be less than **two hundred twenty-five**
27 **dollars (\$225)**~~one hundred seventy-five dollars (\$175)~~];

1 c. If the corporation's or limited liability pass-through entity's gross
2 profits from all sources are equal to or greater than six million
3 dollars (\$6,000,000), the limited liability entity tax shall be
4 seventy-five cents (\$0.75) per one hundred dollars (\$100) of all of
5 the corporation's or limited liability pass-through entity's Kentucky
6 gross profits.

7 In determining eligibility for the reductions contained in this paragraph, a
8 member of a combined group shall consider the combined gross receipts and
9 the combined gross profits from all sources of the entire combined group,
10 including eliminating entries for transactions among the group.

11 (c) A credit shall be allowed against the tax imposed under paragraph (a) of this
12 subsection for the current year to a corporation or limited liability pass-
13 through entity that owns an interest in a limited liability pass-through entity.
14 The credit shall be the proportionate share of tax calculated under this
15 subsection by the lower-level pass-through entity, as determined after the
16 amount of tax calculated by the pass-through entity has been reduced by the
17 minimum tax of two hundred twenty-five dollars (\$225)~~one hundred~~
18 ~~seventy-five dollars (\$175)~~. The credit shall apply across multiple layers of a
19 multi-layered pass-through entity structure. The credit at each layer shall
20 include the credit from each lower layer, after reduction for the minimum tax
21 of two hundred twenty-five dollars (\$225)~~one hundred seventy-five dollars~~
22 ~~(\$175)~~ at each layer.

23 (d) The department may promulgate administrative regulations to establish a
24 method for calculating the cost of goods sold attributable to Kentucky.

25 (3) A nonrefundable credit based on the tax calculated under subsection (2) of this
26 section shall be allowed against the tax imposed by KRS 141.020 or 141.040. The
27 credit amount shall be determined as follows:

- 1 (a) The credit allowed a corporation subject to the tax imposed by KRS 141.040
2 shall be equal to the amount of tax calculated under subsection (2) of this
3 section for the current year after subtraction of any credits identified in KRS
4 141.0205, reduced by the minimum tax of two hundred twenty-five dollars
5 (\$225)~~one hundred seventy-five dollars (\$175)~~, plus any credit determined
6 in paragraph (b) of this subsection for tax paid by wholly or partially owned
7 limited liability pass-through entities. The amount of credit allowed to a
8 corporation based on the amount of tax paid under subsection (2) of this
9 section for the current year shall be applied to the income tax due from the
10 corporation's activities in this state. Any remaining credit from the corporation
11 shall be disallowed.
- 12 (b) The credit allowed members, shareholders, or partners of a limited liability
13 pass-through entity shall be the members', shareholders', or partners'
14 proportionate share of the tax calculated under subsection (2) of this section
15 for the current year after subtraction of any credits identified in KRS
16 141.0205, as determined after the amount of tax paid has been reduced by the
17 minimum tax of two hundred twenty-five dollars (\$225)~~one hundred~~
18 ~~seventy-five dollars (\$175)~~. The credit allowed to members, shareholders, or
19 partners of a limited liability pass-through entity shall be applied to income
20 tax assessed on income from the limited liability pass-through entity. Any
21 remaining credit from the limited liability pass-through entity shall be
22 disallowed.
- 23 (4) Each taxpayer subject to the tax imposed in this section shall file a return, on forms
24 prepared by the department, on or before the fifteenth day of the fourth month
25 following the close of the taxpayer's taxable year. Any tax remaining due after
26 making the payments required in KRS 141.044 shall be paid by the original due
27 date of the return.

- 1 (5) The department shall prescribe forms and promulgate administrative regulations as
2 needed to administer the provisions of this section.
- 3 (6) The tax imposed by subsection (2) of this section shall not apply to:
- 4 (a) For taxable years beginning prior to January 1, 2021:
- 5 1. Financial institutions, as defined in KRS 136.500, except banker's banks
6 organized under KRS 287.135 or 286.3-135;
 - 7 2. Savings and loan associations organized under the laws of this state and
8 under the laws of the United States and making loans to members only;
 - 9 3. Banks for cooperatives;
 - 10 4. Production credit associations;
 - 11 5. Insurance companies, including farmers' or other mutual hail, cyclone,
12 windstorm, or fire insurance companies, insurers, and reciprocal
13 underwriters;
 - 14 6. Corporations or other entities exempt under Section 501 of the Internal
15 Revenue Code;
 - 16 7. Religious, educational, charitable, or like corporations not organized or
17 conducted for pecuniary profit;
 - 18 8. Corporations whose only owned or leased property located in this state
19 is located at the premises of a printer with which it has contracted for
20 printing, provided that:
 - 21 a. The property consists of the final printed product, or copy from
22 which the printed product is produced; and
 - 23 b. The corporation has no individuals receiving compensation in this
24 state as provided in KRS 141.901;
 - 25 9. Public service corporations subject to tax under KRS 136.120;
 - 26 10. Open-end registered investment companies organized under the laws of
27 this state and registered under the Investment Company Act of 1940;

- 1 11. Any property or facility which has been certified as a fluidized bed
2 energy production facility as defined in KRS 211.390;
- 3 12. An alcohol production facility as defined in KRS 247.910;
- 4 13. Real estate investment trusts as defined in Section 856 of the Internal
5 Revenue Code;
- 6 14. Regulated investment companies as defined in Section 851 of the
7 Internal Revenue Code;
- 8 15. Real estate mortgage investment conduits as defined in Section 860D of
9 the Internal Revenue Code;
- 10 16. Personal service corporations as defined in Section 269A(b)(1) of the
11 Internal Revenue Code;
- 12 17. Cooperatives described in Sections 521 and 1381 of the Internal
13 Revenue Code, including farmers' agricultural and other cooperatives
14 organized or recognized under KRS Chapter 272, advertising
15 cooperatives, purchasing cooperatives, homeowners associations
16 including those described in Section 528 of the Internal Revenue Code,
17 political organizations as defined in Section 527 of the Internal Revenue
18 Code, and rural electric and rural telephone cooperatives; or
- 19 18. Publicly traded partnerships as defined by Section 7704(b) of the
20 Internal Revenue Code that are treated as partnerships for federal tax
21 purposes under Section 7704(c) of the Internal Revenue Code, or their
22 publicly traded partnership affiliates. "Publicly traded partnership
23 affiliates" shall include any limited liability company or limited
24 partnership for which at least eighty percent (80%) of the limited
25 liability company member interests or limited partner interests are
26 owned directly or indirectly by the publicly traded partnership; and
- 27 (b) For taxable years beginning on or after January 1, 2021:

- 1 1. Insurance companies, including farmers' or other mutual hail, cyclone,
2 windstorm, or fire insurance companies, insurers, and reciprocal
3 underwriters;
- 4 2. Corporations or other entities exempt under Section 501 of the Internal
5 Revenue Code;
- 6 3. Religious, educational, charitable, or like corporations not organized or
7 conducted for pecuniary profit;
- 8 4. Corporations whose only owned or leased property located in this state
9 is located at the premises of a printer with which it has contracted for
10 printing, provided that:
 - 11 a. The property consists of the final printed product, or copy from
12 which the printed product is produced; and
 - 13 b. The corporation has no individuals receiving compensation in this
14 state as provided in KRS 141.901;
- 15 5. Public service corporations subject to tax under KRS 136.120;
- 16 6. Open-end registered investment companies organized under the laws of
17 this state and registered under the Investment Company Act of 1940;
- 18 7. Any property or facility which has been certified as a fluidized bed
19 energy production facility as defined in KRS 211.390;
- 20 8. An alcohol production facility as defined in KRS 247.910;
- 21 9. Real estate investment trusts as defined in Section 856 of the Internal
22 Revenue Code;
- 23 10. Regulated investment companies as defined in Section 851 of the
24 Internal Revenue Code;
- 25 11. Real estate mortgage investment conduits as defined in Section 860D of
26 the Internal Revenue Code;
- 27 12. Personal service corporations as defined in Section 269A(b)(1) of the

- 1 Internal Revenue Code;
- 2 13. Cooperatives described in Sections 521 and 1381 of the Internal
3 Revenue Code, including farmers' agricultural and other cooperatives
4 organized or recognized under KRS Chapter 272, advertising
5 cooperatives, purchasing cooperatives, homeowners associations
6 including those described in Section 528 of the Internal Revenue Code,
7 political organizations as defined in Section 527 of the Internal Revenue
8 Code, and rural electric and rural telephone cooperatives; or
- 9 14. Publicly traded partnerships as defined by Section 7704(b) of the
10 Internal Revenue Code that are treated as partnerships for federal tax
11 purposes under Section 7704(c) of the Internal Revenue Code, or their
12 publicly traded partnership affiliates. "Publicly traded partnership
13 affiliates" shall include any limited liability company or limited
14 partnership for which at least eighty percent (80%) of the limited
15 liability company member interests or limited partner interests are
16 owned directly or indirectly by the publicly traded partnership.
- 17 (7) (a) As used in this subsection, "qualified exempt organization" means an entity
18 listed in subsection (6)(a) and (b) of this section and shall not include any
19 entity whose exempt status has been disallowed by the Internal Revenue
20 Service.
- 21 (b) Notwithstanding any other provisions of this section, any limited liability
22 pass-through entity that is owned in whole or in part by a qualified exempt
23 organization shall, in calculating its Kentucky gross receipts or Kentucky
24 gross profits, exclude the proportionate share of its Kentucky gross receipts or
25 Kentucky gross profits attributable to the ownership interest of the qualified
26 exempt organization.
- 27 (c) Any limited liability pass-through entity that reduces Kentucky gross receipts

1 or Kentucky gross profits in accordance with paragraph (b) of this subsection
2 shall disregard the ownership interest of the qualified exempt organization in
3 determining the amount of credit available under subsection (3) of this
4 section.

5 (d) The Department of Revenue may promulgate an administrative regulation to
6 further define "qualified exempt organization" to include an entity for which
7 exemption is constitutionally or legally required, or to exclude any entity
8 created primarily for tax avoidance purposes with no legitimate business
9 purpose.

10 (8) The credit permitted by subsection (3) of this section shall flow through multiple
11 layers of limited liability pass-through entities and shall be claimed by the taxpayer
12 who ultimately pays the tax on the income of the limited liability pass-through
13 entity.

14 ➔Section 5. Sections 1 to 3 of this Act take effect at 11:59 p.m. on June 30, 2020.

15 ➔Section 6. Section 4 of this Act applies to taxable years beginning on or after
16 January 1, 2020.

17 ➔Section 7. Whereas expenditures from the General Fund can be no greater than
18 the receipts into the General Fund during a fiscal year and this Act contains provisions
19 related to that balancing of the General Fund, an emergency is declared to exist, and this
20 Act takes effect upon its passage and approval by the Governor or upon otherwise
21 becoming a law.